

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FEDERAL TRADE COMMISSION,
STATE OF ARIZONA,
STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA,
STATE OF ILLINOIS,
STATE OF MARYLAND,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF OREGON, and
STATE OF WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.: 3:24-cv-00347-AN

**STIPULATION AND ORDER
REGARDING THE SCOPE OF THE
RECORD**

WHEREAS Plaintiffs Federal Trade Commission and the States of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming and the District of Columbia, by and through their respective attorneys general (“Plaintiffs”) and Defendants The Kroger Co. and Albertsons Companies, Inc. (“Defendants”) have agreed to the terms of this Stipulation and Order Regarding the Scope of the Record (“Stipulation”). Plaintiffs and Defendants (together, the “Parties and each a “Party”) agree that this Stipulation shall apply to the admissibility of documents following the conclusion of the evidentiary hearing on Plaintiffs’ motion for preliminary injunction

(“Evidentiary Hearing”) and resolves the Parties’ dispute regarding the admissibility of the scope of the administrative record in this proceeding. (ECF Nos. 274, 276.)

WHEREAS the Parties therefore are entering into this Stipulation with the request that the Court enter it as an Order.

NOW THEREFORE, it is hereby STIPULATED and ORDERED:

Following the conclusion of the Evidentiary Hearing, each Party may seek to offer into evidence a reasonable number of exhibits in support of that Party’s proposed findings of fact (“Post-Hearing Exhibits”). The Parties shall retain all rights to object to the admission of any Post-Hearing Exhibits, which shall be resolved by the following process:

1. A Party intending to seek to offer into evidence any Post-Hearing Exhibits must disclose them to the opposing Party no later than three calendar days before the deadline to file their respective proposed findings of fact, which under the Case Management and Scheduling Order is ten days after the Evidentiary Hearing concludes. (ECF No. 88 at 19.)

2. The Parties shall meet and confer to attempt to resolve any objections to Post-Hearing Exhibits before filing their proposed findings of fact.

3. On the same date the Parties file proposed findings of fact, they shall also file:

- i. A joint list of the Post-Hearing Exhibits they agree are admissible.
- ii. A joint list of the Post-Hearing Exhibits they seek to offer in support of their proposed findings of fact, but to which at least one Party maintains an objection. This list shall identify the Party seeking to offer the exhibit and the Party maintaining the objection, and contain a brief explanation of the basis for the objection.

[PROPOSED] ORDER RE: SCOPE OF THE RECORD

iii. Separate briefs, not to exceed five pages each for Plaintiffs and Defendants, with any arguments related to the remaining objections.

Dated: August 26, 2024

Respectfully submitted,

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SO ORDERED:

August _____, 2024

UNITED STATES DISTRICT JUDGE

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